

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5014 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MI JOSHIPURA

Versus

STATE OF GUJARAT THROUGH SECRETARY

Appearance:

MR BA VAISHNAV for Petitioner

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/04/97

ORAL JUDGEMENT

This petition was admitted to final hearing on 6th September, 1996 and the respondents were directed to file their affidavit in reply to the petition, if any, on or before 31st December, 1996. Today when the matter is taken up for hearing, neither of the respondents has filed its affidavit in reply to the petition nor the learned advocate appearing for the respondents is present.

The petitioner herein is an Assistant Commissioner of Labour who has claimed deemed promotion to the post of Assistant Commissioner of Labour with effect from 23rd April, 1982. The facts leading to the petition are as under :

Under order dated 26th August, 1969, the petitioner was appointed as Government Labour Officer. His seniority vis-a-vis other Government Labour Officers was determined on the basis of continuous officiation. Under the provisional seniority list published on 8th September, 1981, the petitioner appeared junior to one Shri Bhansali and Shri Dave. Said Shri Bhansali and Shri Dave were promoted to the post of Assistant Labour Commissioner on 23rd April, 1982. The petitioner applied for direct recruitment to the post of Assistant Labour Commissioner and having been selected was appointed as Assistant Labour Commissioner on 8th December, 1983. The provisional seniority list of the Government Labour Officers was revised and published under Government Circular dated 19th December, 1983. Under the said list (Annexure "B" to the petition), the seniority of the Government Labour Officers was arranged in accordance with the statutory quota for direct recruitment and promotion. The petitioner therein has been shown to be senior to the above referred Shri Bhansali and Shri Dave. The said seniority list was finalised under Government Circular dated 18th December, 1989 and the petitioner retained his seniority over said Shri Bhansali and Shri Dave in the final seniority list also. Thus, the petitioner's position in the cadre of Government Labour Officer having become crystallized, he made a representation to the Government to grant him deemed promotion to the post of Assistant Commissioner of Labour with effect from 23rd April, 1982, the date on which Shri Bhansali and Shri Dave were promoted. He also requested that he may be treated as having been promoted to the post of Assistant Commissioner of Labour and be treated as promotee Assistant Commissioner of Labour. Pursuant to the representation and the reminders sent by the petitioner, the Government under its communication dated 28th June, 1995 inquired of the petitioner whether he wanted to opt for being treated as promotee Assistant Commissioner instead of a Direct Recruit Assistant Commissioner. The petitioner under his reply dated 10th July, 1995 submitted his option to be treated as promotee Assistant Commissioner of Labour and claimed that he be given deemed promotion with effect from 23rd April, 1982, the date on which Shri Bhansali and Shri Dave were so promoted. Since then the petitioner has sent several reminders, however, the option submitted by the

petitioner under his communication dated 10th July, 1995 has not been decided till the date.

The facts stated in the petition are substantiated by the relevant seniority lists which are produced at Annexures "A", "B" and "C" to the petition. It does not appear to be fair that the Government, having given option to the petitioner for being treated as promotee Assistant Commissioner of Labour, has not taken any decision on the option submitted by him. Even after filing of this petition, the Government has not cared to file any affidavit in reply to the petition. The petition, therefore, requires to be allowed. The Government is directed to consider the option given by the petitioner on 10th July, 1995 and communicate its decision to the petitioner as soon as possible but not beyond eight weeks from the date of receipt of copy of this order. In the event the petitioner's option for being treated as promotee Assistant Commissioner of Labour is accepted, the petitioner's claim for deemed promotion with effect from 23rd April, 1982 shall be considered in accordance with law and if the petitioner is otherwise found to be eligible and fit for promotion, he be given deemed date of promotion as that of 23rd April, 1982. In that eventuality, the petitioner shall be entitled to revision of his pay with effect from date of the deemed promotion. However, he shall not be entitled to claim actual difference of salary from the date of deemed promotion till the date of actual promotion. It is further clarified that in that case the petitioner shall be treated as promotee Assistant Commissioner of Labour for all purposes and he shall not be entitled to claim any benefit of being direct recruit Assistant Commissioner of Labour. The aforesaid exercise of considering the petitioner's case for deemed promotion and giving of other consequential benefits shall be completed as expeditiously as possible. Petition is allowed to the aforesaid extent. Rule is made absolute. The respondents shall bear the costs of this petition.
